

BILL LOCKYER, Attorney General
of the State of California
E.A. JONES III, State Bar No. 71375
Deputy Attorney General
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2543
Facsimile: (213) 897-1071

Attorneys for Complainant

**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the First Amended Accusation
Against:

ROBERT FRANK FORSTER

1115 Pine Street
Santa Monica, CA 90405

Physical Therapist License No. PT 10374

Respondent.

Case No. 1D 2000 62530, consolidated
with Case Nos. 1D 2002 62948, 1D-
2003-63544 and 1D-2002-63227.

**FIRST AMENDED
A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this First Amended Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs (Board).

2. On or about May 14, 1981, the Board issued Physical Therapist License Number PT 10374, to Robert Frank Forster (Respondent). The Physical Therapist license was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2004, unless renewed.

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1 **JURISDICTION**

2 3. This First Amended Accusation is brought before the Board, under the
3 authority of the following sections of the Business and Professions Code (Code).

4 4. Section 2660 of the Code states, in pertinent part:

5 “The board may, after the conduct of appropriate proceedings under the
6 Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose
7 probationary conditions upon, or issue subject to terms and conditions any license, certificate, or
8 approval issued under this chapter for any of the following causes:

9 * * *

10 “(h) Gross negligence in his or her practice as a physical therapist.

11 “(i) Conviction of a violation of any of the provisions of this chapter or of the
12 State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or
13 assisting in or abetting the violating of, or conspiring to violate any provision or term of
14 this chapter or of the State Medical Practice Act.

15 “(j) The aiding or abetting of any person to violate this chapter or any regulations
16 duly adopted under this chapter.

17 “(k) The aiding or abetting of any person to engage in the unlawful practice of
18 physical therapy.

19 “(l) The commission of any fraudulent, dishonest, or corrupt act which is
20 substantially related to the qualifications, functions, or duties of a physical therapist.”

21 5. Section 2630 of the Code states, in pertinent part:

22 “A physical therapist . . . may utilize the services of one aide engaged in patient-
23 related tasks to assist the physical therapist in his or her practice of physical therapy. . . . The
24 aide shall at all times be under the orders, directions, and immediate supervision of the physical
25 therapist. . . . The physical therapist shall provide continuous and immediate supervision of the
26 aide. The physical therapist shall be in the same facility as, and in proximity to, the location
27 where the aide is performing patient-related tasks, and shall be readily available at all times to
28 provide advice or instruction to the aide. When patient-related tasks are provided to a patient by

1 an aide, the supervising physical therapist shall, at some point during the treatment day, provide
2 direct service to the patient as treatment for the patient's condition, or to further evaluate and
3 monitor the patient's progress, and shall correspondingly document the patient's record."

4 6. Section 2620.7 of the Code states:

5 "A physical therapist shall document his or her evaluation, goals, treatment plan,
6 and summary of treatment in the patient record. Patient records shall be maintained for a period
7 of no less than seven years following the discharge of the patient, except that the records of
8 unemancipated minors shall be maintained at least one year after the minor has reached the age
9 of 18 years, and not in any case less than seven years."

10 7. California Code of Regulations, title 16, section 1399, states in pertinent
11 part:

12 "A physical therapy aide is an unlicensed person who assists a physical therapist
13 and may be utilized by a physical therapist in his or her practice by performing nonpatient
14 related tasks, or by performing patient related tasks.

15 "(a) As used in these regulations:

16 "(1) A 'patient related task' means a physical therapy service rendered directly to
17 the patient by an aide, excluding nonpatient related tasks as defined below.

18 "(2) A 'nonpatient related task' means a task related to observation of the patient,
19 transport of patients, physical support only during gait or transfer training, housekeeping
20 duties, clerical duties and similar functions.

21 "(b) 'Under the orders, direction and immediate supervision' means:

22 "(1) Prior to the initiation of care, the physical therapist shall evaluate every
23 patient prior to the performance of any patient related tasks by the aide. The evaluation
24 shall be documented in the patient's record.

25 "(2) The physical therapist shall formulate and record in the patient's record a
26 treatment program based upon the evaluation and any other information available to the
27 physical therapist, and shall determine those patient related tasks which may be assigned
28 to an aide. The patient's record shall reflect those patient related tasks that were rendered

1 by the aide, including the signature of the aide who performed those tasks.

2 “(3) The physical therapist shall assign only those patient related tasks that can be
3 safely and effectively performed by the aide. The supervising physical therapist shall be
4 responsible at all times for the conduct of the aide while he or she is on duty.

5 “(4) The physical therapist shall provide continuous and immediate supervision of
6 the aide. The physical therapist shall be in the same facility as and in immediate
7 proximity to the location where the aide is performing patient related tasks, and shall be
8 readily available at all times to provide advice or instruction to the aide. When patient
9 related tasks are provided a patient by an aide the supervising physical therapist shall at
10 some point during the treatment day provide direct service to the patient as treatment for
11 the patient's condition or to further evaluate and monitor the patient's progress, and so
12 document in the patient's record.

13 * * *

14 “(6) The supervising physical therapist shall countersign with their first initial and
15 last name, and date all entries in the patient's record, on the same day as patient related
16 tasks were provided by the aide.”

17 8. Section 810 of the Code states in pertinent part:

18 “(a) It shall constitute unprofessional conduct and grounds for disciplinary action,
19 including suspension or revocation of a license or certificate, for a health care
20 professional to do any of the following in connection with his or her professional
21 activities:

22 * * *

23 “(2) Knowingly prepare, make, or subscribe any writing, with intent to present or
24 use the same, or to allow it to be presented or used in support of any false or fraudulent
25 claim.

26 “(b) It shall constitute cause for revocation or suspension of a license or
27 certificate for a health care professional to engage in any conduct prohibited under
28 Section 1871.4 of the Insurance Code or Section 550 of the Penal Code.”

1 9. Section 1871.4 of the Insurance Code states in pertinent part:

2 “(a) It is unlawful to do any of the following:

3 “(1) Make or cause to be made any knowingly false or fraudulent material
4 statement or material representation for the purpose of obtaining or denying any
5 compensation, as defined in Section 3207 of the Labor Code.

6 “(2) Present or cause to be presented any knowingly false or fraudulent written or
7 oral material statement in support of, or in opposition to, any claim for compensation for
8 the purpose of obtaining or denying any compensation, as defined in Section 3207 of the
9 Labor Code.

10 “(3) Knowingly assist, abet, conspire with, or solicit any person in an unlawful
11 act under this section.

12 * * *

13 “For the purposes of this subdivision, ‘statement’ includes, but is not limited to,
14 any notice, proof of injury, bill for services, payment for services, hospital or doctor
15 records, X-ray, test results, medical-legal expense as defined in Section 4620 of the Labor
16 Code, other evidence of loss, injury, or expense, or payment.”

17 9. Section 2661.5 of the Code states:

18 “(a) In any order issued in resolution of a disciplinary proceeding before
19 the board, the board may request the administrative law judge to direct any
20 licensee found guilty of unprofessional conduct to pay to the board a sum not to
21 exceed the actual and reasonable costs of the investigation and prosecution of the
22 case.

23 “(b) The costs to be assessed shall be fixed by the administrative law
24 judge and shall not in any event be increased by the board. When the board does
25 not adopt a proposed decision and remands the case to an administrative law
26 judge, the administrative law judge shall not increase the amount of the assessed
27 costs specified in the proposed decision.

28 “(c) When the payment directed in an order for payment of costs is not

1 made by the licensee, the board may enforce the order of payment by bringing an
2 action in any appropriate court. This right of enforcement shall be in addition to
3 any other rights the board may have as to any licensee directed to pay costs.

4 “(d) In any judicial action for the recovery of costs, proof of the board's
5 decision shall be conclusive proof of the validity of the order of payment and the
6 terms for payment.

7 “(e) (1) Except as provided in paragraph (2), the board shall not renew
8 or reinstate the license or approval of any person who has failed to pay all
9 of the costs ordered under this section.

10 (2) Notwithstanding paragraph (1), the board may, in its
11 discretion, conditionally renew or reinstate for a maximum of one year the
12 license or approval of any person who demonstrates financial hardship and
13 who enters into a formal agreement with the board to reimburse the board
14 within that one year period for those unpaid costs.

15 “(f) All costs recovered under this section shall be deposited in the
16 Physical Therapy Fund as a reimbursement in either the fiscal year in which the
17 costs are actually recovered or the previous fiscal year, as the board may direct.”

18 **FIRST CAUSE FOR DISCIPLINE**

19 (Aiding and Abetting the Illegal Practice of
20 Physical Therapy When Utilizing an Aide)

21 11. Respondent is subject to disciplinary action under section 2660,
22 subdivisions (i), (j), and (k), and section 2630, in conjunction with California Code of
23 Regulations Title 16, section 1399, in that he aided and abetted the illegal practice of physical
24 therapy in the use of an aide. The circumstances are as follows:

25 A. With respect to N.A.¹, the patient was treated by physical therapy aides
26

27
28 1. All patients are referred to herein by their initials in order to protect their privacy. Their full names will be disclosed to Respondent upon a timely request for discovery.

1 employed by Respondent on numerous occasions between April 4, and September 28,
2 2000, and between January 2, and April 24, 2001, without direct treatment rendered by a
3 licensed physical therapist.

4 B. With respect to J.C., the patient was treated by physical therapy aides
5 employed by Respondent on numerous occasions between December 17, 1999 and June
6 30, 2000, and between February 12, and April 2, 2001, without direct treatment rendered
7 by a licensed physical therapist.

8 C. With respect to N.S., the patient was treated by physical therapy aides
9 employed by Respondent on numerous occasions between January 18, and April 26,
10 2001, without direct treatment rendered by a licensed physical therapist.

11 D. With respect to M.P., the patient was treated by physical therapy aides
12 employed by Respondent on numerous occasions between January 3, and April 6, 2001,
13 without direct treatment rendered by a licensed physical therapist.

14 E. With respect to A.N., the patient was treated by physical therapy aides
15 employed by Respondent on numerous occasions between September 24, and November
16 24, 1999, without direct treatment rendered by a licensed physical therapist.

17 F. With respect to K.W., the patient was treated by physical therapy aides
18 employed by Respondent on numerous occasions between November 12, 1999, and May
19 30, 2000, without direct treatment rendered by a licensed physical therapist.

20 G. With respect to K.A., the patient was treated by physical therapy aides
21 employed by respondent on numerous occasions between May 7, 2002, and September
22 27, 2002, without direct treatment rendered by a licensed physical therapist.

23 H. With respect to J.G., the patient was treated by physical therapy aides
24 employed by respondent on numerous occasions between September 23, 2000, and
25 November 28, 2001, without direct treatment rendered by a licensed physical therapist.

26 I.. As to all of the above-mentioned patients, Respondent failed to personally,
27 or ensure that physical therapist employed by him, properly supervised physical therapy
28 aides in that charts of patients who had received physical therapy services from physical

1 aides did not contain documentation of the delegation to the physical therapy aide(s),
2 patient records did not contain treatment provided by the physical therapists or
3 involvement of the supervising physical therapist and signature of the supervising
4 physical therapist in order to identify particular services provided.

5 J. Respondent allowed two aides to render treatment outside the clinic without
6 the supervision of a licensed physical therapist.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Aiding and Abetting the Practice of Over-Utilizing Physical Therapy Services)

9 12. Respondent is subject to disciplinary action under section 2660, subdivision
10 (k), and 810, in conjunction with Insurance Code section 1871.4, in that Respondent aided and
11 abetted in the practice of over-utilizing physical therapy services. The circumstances are as
12 follows:

13 A. With respect to N.A., the patient was treated by physical therapy aides on
14 numerous occasions between April 4, and September 28, 2000, and between January 2,
15 and April 24, 2001, without significant progress.

16 B. With respect to J.C., the patient was treated by physical therapy aides on
17 numerous occasions between December 17, 1999 and June 30, 2000, and between
18 February 12, and April 2, 2001, without significant progress.

19 C. With respect to N.S., the patient was treated by physical therapy aides on
20 numerous occasions between January 18, and April 26, 2001, without significant
21 progress.

22 D. With respect to M.P., the patient was treated by physical therapy aides on
23 numerous occasions between January 3, and April 6, 2001, without significant progress.

24 E. With respect to A.N., the patient was treated by physical therapy aides on
25 numerous occasions between September 24, and November 24, 1999, without significant
26 progress.

27 F. With respect to K.W., the patient was treated by physical therapy aides on
28 numerous occasions between November 12, 1999, and May 30, 2000, without significant

1 progress.

2 G. With respect to K.A., the patient was treated by physical therapy aides on
3 numerous occasions between May 7, 2002, and September 27, 2002, without significant
4 progress.

5 H. With respect to J.G., the patient was treated by physical therapy aides on
6 numerous occasions between September 23, 2000, and November 29, 2001, without
7 significant progress.

8 I. All patients referred to in paragraphs 12.A.-H. were billed for extensive
9 exercise and treatment programs.

10 **THIRD CAUSE FOR DISCIPLINE**

11 (Unprofessional Conduct/Presenting False Statements)

12 13. Respondent is subject to disciplinary action under section 810, in
13 conjunction with Insurance Code section 1871.4, in that Respondent presented false statements to
14 insurance carriers and others, for compensation. The circumstances are as follows:

15 A. With respect to patient L.C., Respondent charged for physical therapy
16 services in July, August and September, 1999, when L.C. was not on the premises and did
17 not receive any physical therapy services.

18 B. With respect to patient R.F., Respondent charged for physical therapy
19 services in February, March and April, 1999, when R.F. was not on the premises and did
20 not receive any physical therapy services.

21 C. With respect to patient B.K., Respondent charged for physical therapy
22 services in July, August, September, October, November, and December, 1997, and
23 January 1998, when B.K. was not on the premises and did not receive any physical
24 therapy services.

25 D. With respect to patient B.G., Respondent charged for physical therapy
26 services in June, July, and September, 1998, when B.G. was not on the premises and did
27 not receive any physical therapy services.

28 E. With respect to patient N.C., Respondent charged over 30 times in 2000, for

1 use of physical therapy equipment that he did not own.

2 F. With respect to patient S.L., Respondent charged six times, in June of 2000,
3 for use of physical therapy equipment which Respondent did not possess.

4 G. With respect to patients L.C., B.K., B.G., N.C., L.M., and S.L., Respondent
5 charged for physical therapy services which were not recorded on the patients' charts or
6 records.

7 H. With respect to patient J.G., respondent charged for physical therapy
8 services for January 1, 2001, when J.G. was not on the premises and did not receive any
9 physical therapy services.

10 I. With respect to patients N.A., J.C., N.S., M.P., A.N., J.G., and K.W.,
11 Respondent billed for services which were not provided.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 (Gross Negligence)

14 14. Respondent is subject to disciplinary action under section 2660, subsection
15 (h), in that Respondent engaged in extreme departures from the standard of care with respect to
16 his treatment of numerous patients. The circumstances are as follows:

17 A. Complainant repeats Paragraphs 11.A.-J., 12. A.-I., and 13.A.-I., as though
18 fully set forth herein.

19 B. With respect to K.A., between on or about April 10, 2002, and May 10,
20 2002, the patient was treated with physical therapy by a physical therapist employed by
21 respondent without a proper medical diagnosis.

22 C. With respect to K.A., a discharge summary was not documented in the
23 patient's physical therapy records.

24 D. With respect to K.A., physical therapy was continued subsequent to mid-
25 June 2002, despite the fact that the patient was not improving.

26 E. With respect to J.G., between on or about February 2, 2001, and October
27 19, 2001, the patient was treated with physical therapy by a physical therapist employed
28 by respondent without a proper medical diagnosis.

1 F. With respect to J.G., a discharge summary was not documented in the
2 patient's physical therapy records.

3 G. With respect to J.G., physical therapy was continued subsequent to late-
4 November 2000, despite the fact that the patient was not improving.

5 **FIFTH CAUSE FOR DISCIPLINE**

6 (Fraudulent, Dishonest or Corrupt Acts)

7 16. Respondent is subject to disciplinary action under section 2660, subsections
8 (i), (j) and (l), in that Respondent committed fraudulent, dishonest or corrupt acts with respect to
9 rendering physical therapy to patients. The circumstances are as follows:

10 A. Complainant repeats Paragraphs 11.A.-J., 12. A.-I., and 13.A.-I., as though
11 fully set forth herein.

12 B. With respect to K.A., charges for physical therapy services provided to
13 K.A. far exceeded the community standard for billing for physical therapy services.

14 C. With respect to K.A., physical therapy records were inappropriately altered
15 by adding dates and the initials of a licensed physical therapist subsequent to the date the
16 services were provided.

17 D. With respect to J.G., charges for physical therapy services provided to J.G.
18 far exceeded the community standard for billing for physical therapy services.

19 **SIXTH CAUSE FOR DISCIPLINE**

20 (Failure to Document Treatment)

21 18. Respondent is subject to disciplinary action under 2620.7, in conjunction
22 with California Code of Regulations, Title 16, section 1399, in that he failed to keep proper
23 records of physical therapy treatments that he rendered to patients L.C., B.G., B.K., N.C., L.M.,
24 S.L., N.A., J.C., N.S., M.P., A.N., K.A., J.G., and K.W.

25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein
27 alleged, and that following the hearing, the Physical Therapy Board of California issue a
28 decision:

1. Revoking or suspending Physical Therapist License Number PT 10374,
issued to Robert Frank Forster;

2. Ordering Robert Frank Forster to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.5;

3. Taking such other and further action as deemed necessary and proper.

DATED: January 29, 2004 .

Original Signed By: _____
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant

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FORSTER am d acc.wpd